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C-F/100 (1)

IN THE HIGHCOURT OF JUDICATURE AT BILASPUR CHHATTISGARH

W.P. No. 1498 /2001

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

PETITIONER/ : Smt. Sunita Singh W/o Shri R.K. Singh aged 45 years R/o Bhadara Para, Balco Nagar, Korba Distt. Korba (C.G.)

Vs

RESPONDENATS :
1. State of Chhattisgarh Through The Secretary, Revenue Department Raipur.
2. The Collector, Korba (C.G.)
3. The Nayab Tahsildar Korba (C.G.)
4. Shri Chandra Kumar Verma Age 35 years Ward Member No.31 Korba (C.G.)
5. Shri Babulal Maitri, Patwari Halka No. 3, Korba (C.G.)
6. Shri R.K. Singh, aged 50 years S/o Shri L.N. Singh Village Padimar Korba (C.G.)

P. COMPARED 14/2/01

(162)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP/498/01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

19-3-2004

Shri S.K. Beriwal, counsel for the petitioner.

Shri S.C. Verma, Panel Lawyer for respondents 1 to 3.

Shri H.S. Patel, counsel for respondent No.4.

Shri Sanjay K. Agrawal, counsel for the intervener.

The petitioner has preferred this petition under Articles 226/227 of the Constitution of India being aggrieved by the order dated 9-6-2001 passed by respondent No.3, the Naib Tehsildar in revenue case No.110/A-68/98-99.

The petitioner's case is that she is the owner of the land bearing Khasra No.136/2g, area 0.11 acres situated at village Padimar, Tehsil and District Korba. The petitioner has constructed boundary wall over the said Khasra Number and she is in peaceful possession and occupation of the said land. Copy of Bhu-Adhikar Avam Rin Pustika is Annexure-P/1. The land bearing Khasra No.136/1, area 1.50 acres is Government land and recorded as forest of big trees in which 0.08 acres is shown unauthorized possession of respondent No.6, which is AnnexureP/2.

The respondent No.3 initiated proceeding under Section 248 of the Madhya Pradesh Land Revenue Code, 1959 against the husband of the petitioner/respondent No.6 on the allegations that he has unauthorizedly constructed a house, aangan and garden on the government land area 0.08 acres which is part of Khasra No.136/1. A revenue case No.6A/97-98 was registered by the Naib Tehsildar, Korba. On 5-5-98, an order was passed by respondent No.3 imposing a fine of Rs.200/- on respondent No.6, which came to be deposited by respondent No.6, as per Annexure-P/3.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The Naib Tehsildar again upon instigated by respondents 4 and 5 instituted a separate proceeding under Section 248 of the Madhya Pradesh Land Revenue Code, 1959 against the husband of the petitioner on the allegation that he has occupied the Government land bearing Khasra No.136/1 and constructed a house and garden. The revenue case No.110A/68/98-99 was decided on 14-6-99 and order for removal of construction over Khasra No.136/1 was passed and fine of Rs.500/- was imposed and that amount was deposited, as per Annexures-P/4 & P/5. And the photographs were taken which are Annexures-P/6 to P/11.

Now, the respondents unauthorizedly and illegally want to dispossess the petitioner from her land bearing Khasra No.136/2g, area 0.11 acres under the garb of removing encroachments of respondent No.6. Show cause notice was issued by the respondents on 15-12-2000 in the name of respondent No.6 to remove the unauthorized constructions. On 21-12-2000, the Revenue Inspector along with Halka Patwari, Municipal Corporation, Kotwar of the village Padimar and ward members worked out measurement of Khasra No.136/1. However, respondent No.1 was not able to give any written report. Therefore, Panchanama was prepared as per Annexure-p/16.

The further case of the petitioner is that in the garb of removing the encroachment the respondents are interfering with the legal and peaceful possession of the petitioner bearing Khasra No.136/2g and they are demolishing the construction of the petitioner, which was constructed after getting the permission of the Municipal Corporation, Korba.

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Return has been filed on behalf of respondents in which categorical reply is that they are not disputing the title of the petitioner on Khasra No.136/2g. But the case of the respondents is that the construction which is standing on the part of Khasra No.136/1 they are removing whereas, the petitioner's contention is that she is in possession of Khasra No.136/2g.

I have heard the learned counsel for the parties and perused the records.

The main dispute between the parties is that the petitioner is claiming that she is in possession of her own land bearing Khasra No.136/2g and she has not trespassed or encroached upon the land bearing Khasra No.136/1 whereas, respondents' objection is that the petitioner's husband has trespassed and took into possession of part of land bearing Khasra No.136/1, therefore, they are removing the encroachment of the petitioner's husband which is part of Khasra No.136/1 and not the petitioner.

In view of the above disputed facts, as to whether the respondents are removing the encroachment which is existing on the Khasra No.136/1 i.e. Government land or they are removing the construction of petitioner, which is existing on 136/2g. There is no admitted/agreed map on the record whereby this Court can reach to the conclusion that whether particular disputed portion of the land falls on the Khasra No.136/2g or Khasra No.136/1 Government land.

These disputed questions can be decided only after appointing the Commissioner under Order 26 Rule 9 of the CPC by any Civil Court and these disputed questions cannot be decided in this writ petition and for this I am fortified in my view by the judgment of the Hon'ble Apex Court

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in the matter of **Shreepat v. Rajendra Prasad & Ors.** reported in **JT 2000 (7) SC 379** in which it has been held that:-

> "The principal contention raised by learned Counsel for the Appellant is that though there was a serious dispute with regard to the identity of the land in dispute, whether the land in dispute formed part of Khasra No.257/3 or Khasra No.257/1, the courts below did not get the identity established and decreed the suit of the Respondent only on the basis of oral evidence which was not sufficient for the purpose of establishing the identity of the land in dispute at the spot.
>
> In our opinion, this contention is correct. Since there was a serious dispute with regard to the area and boundaries of the land in question, especially with regard to its identity, the courts below, before decreeing the suit should have got the identity established by issuing a survey commission to locate the plot in dispute and find out whether it formed part of Khasra No.257/3 or Khasra No.257/1."

In the present case, similar dispute exists between the petitioner and the respondents to the effect that whether the particular disputed land falls under Khasra No.136/2g or Khasra No.136/1. Therefore, this disputed question can only be decided by the Civil Court.

Learned counsel for the petitioner submits that the writ petition is disposed of ~~then~~ the petitioner has reasonable apprehension that by the time she will approach the Civil Court for obtaining the order, the

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respondents will demolish the existing construction which is existing on the petitioner's land within her own right.

The request made by the learned counsel for the petitioner appears to be reasonable and fair. Therefore, four weeks' time is allowed to the petitioner to approach the civil Court for obtaining appropriate orders, if so desires and advised. Till then respondents are directed to maintain the status quo as existed on today.

With the directions and observations aforesaid, the writ petition stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge